

**441—7.5(17A) The right to appeal.** Any person or group of persons may file an appeal with the department concerning any issue. The department shall determine whether a hearing shall be granted.

**7.5(1) When a hearing is granted.** A hearing shall be granted to any appellant when the right to a hearing is granted by state or federal law or Constitution, except as limited in subrules 7.5(2) and 7.5(4).

**7.5(2) When a hearing is not granted.** A hearing shall not be granted when:

*a.* One of the following issues is appealed:

(1) The service is no longer available through the department.  
(2) Rescinded IAB 7/6/05, effective 7/1/05.  
(3) Payment for a medical claim has been made in accordance with the Medicaid payment schedule for the service billed.

(4) Children have been removed from or placed in a specific foster care setting.

(5) Children have not been placed with or have been removed from a preadoptive family.

(6) A qualified provider has denied a person presumptive eligibility for Medicaid under 441—subrule 75.1(30) or 75.1(40).

(7) A qualified provider has determined a person to be presumptively eligible for Medicaid under 441—subrule 75.1(30) or 75.1(40), but presumptive eligibility ends due to the person's failure to file an application.

(8) Notice has been issued from the treasury offset program for a food stamp overpayment.

(9) A rate determination has been reviewed under rule 441—152.3(234).

(10) The maximum provider rate ceiling has been contested for child care assistance under 441—subrule 170.4(7).

(11) The risk pool board has accepted or rejected an application for assistance from the risk pool fund or the tobacco settlement fund risk pool fund in whole or in part under rules 441—25.66(426B) and 441—25.77(78GA, ch1221).

(12) The appellant has a complaint about child support recovery matters other than those described in numbered paragraph “5” of the definition of an aggrieved person in rule 441—7.1(17A).

(13) The appellant has a complaint about a local office employee (when this is the only issue of the appeal).

(14) A request for an exception to policy under 441—subrule 1.8(1) has been denied.

(15) A final decision from a previous hearing with a presiding officer has been implemented.

(16) Based on the doctrine of issue preclusion.

(17) The appeal involves patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

*b.* Either state or federal law requires automatic grant adjustment for classes of recipients. The director of the department shall decide whether to grant a hearing in these cases. When the reason for an individual appeal is incorrect grant computation in the application of these automatic adjustments, a hearing may be granted.

*c.* State or federal law or regulation provides for a different forum for appeals.

*d.* The appeal is filed prematurely as:

(1) There is no adverse action by the department, or

(2) The appellant has not exhausted the reconsideration process.

*e.* Upon review, it is determined that the appellant does not meet the criteria of an aggrieved person as defined in rule 441—7.1(17A).

*f.* The sole basis for denying, terminating or limiting assistance under 441—Chapter 47 or 441—Chapter 58 is that funds for the respective programs have been reduced, exhausted, eliminated or otherwise encumbered.

*g.* The appellant is an “aggrieved party” as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health and developmental disabilities commission in accordance with rule 441—22.5(225C).

*h.* The issue appealed is moot.

*i.* The issue appealed has previously been determined in another appeal by the same appellant.

**7.5(3) Group hearings.** The department may respond to a series of individual requests for hearings by requesting the department of inspections and appeals to conduct a single group hearing in cases in which the sole issue involved is one of state or federal law or policy or change in state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

**7.5(4) Time limit for granting hearing to an appeal.** Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

*a.* In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. Time limits for food stamps and offsets vary as follows:

(1) For appeals regarding food stamps, a hearing shall be held if the appeal is made within 90 days after official notification of an action.

(2) For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1) “e.”

*b.* When the appeal is made more than 30 days (or more than 15 days for state or federal tax or debtor offsets) but less than 90 days after notification, the director shall determine whether a hearing shall be granted. The director may grant a hearing if one or more of the following conditions existed:

(1) There was a serious illness or death of the appellant or a member of the appellant’s family.

(2) There was a family emergency or household disaster, such as a fire, flood, or tornado.

(3) The appellant offers a good cause beyond the appellant’s control, which can be substantiated.

(4) There was a failure to receive the department’s notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

*c.* The time in which to appeal an agency action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

*d.* The day after the official notice is mailed is the first day of the time period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

*e.* PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within ten days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in paragraph “b” is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in paragraphs “a,” “b,” and “c” in relation to the action alleged to have involved discrimination unless good cause for late filing as described in paragraph “b” is found.

*f.* An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

**7.5(5) Informal settlements.** The time limit for submitting an appeal is not extended while attempts at informal settlement are in progress. Prehearing conferences are provided for at subrules 7.7(4) and 7.8(4).

**7.5(6) Appeals of family investment program (FIP), refugee cash assistance (RCA), and PROMISE JOBS overpayments.**

*a.* Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence, computation, and amount of a FIP, RCA, or PROMISE JOBS overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

1. Form 470-2616, Demand Letter for FIP/RCA Agency Error Overissuance;

2. Form 470-3490, Demand Letter for FIP/RCA Client Error Overissuance;

3. Form 470-3990, Demand Letter for PROMISE JOBS Agency Error Overissuance;

4. Form 470-3991, Demand Letter for PROMISE JOBS Client Error Overissuance; or

5. Form 470-3992, Demand Letter for PROMISE JOBS Provider Error Overissuance.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent notice as identified in paragraph “a.”

c. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the recovery of an overpayment through benefit reduction, as described at rule 441—46.25(239B), but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485 or 470-0486, Notice of Decision, informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

**7.5(7) Appeals of Medicaid, state supplementary assistance (SSA), and HAWK-I program overpayments.**

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence and amount of a Medicaid, SSA, or HAWK-I program overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

1. Form 470-2891, Notice of Overpayment Demand Letter for the Medicaid or State Supplementary Assistance Overpayment; or

2. Form 470-3984, Demand Letter for HAWK-I Overpayment.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent notice as identified in paragraph “a.”

**7.5(8) Appeal rights under the family investment program limited benefit plan.** A participant only has the right to appeal the establishment of the limited benefit plan once at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, when the reason for the appeal is based on an incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.

**7.5(9) Appeals of child care assistance benefit overissuances or overpayments.**

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence, computation, and amount of a child care assistance benefit overissuance or overpayment begins when the department sends the first Form 470-3627, Demand Letter for Child Care Assistance Provider Error Overissuance, or Form 470-3807, Demand Letter for Child Care Assistance Client Error Benefit Overissuance, informing the person of the child care assistance overpayment.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent Demand Letter for Child Care Assistance Provider Error Overissuance or Demand Letter for Child Care Assistance Client Error Benefit Overissuance.

**7.5(10) Appeals of food assistance overpayments.**

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence, computation, and amount of a food stamp overpayment begins when the department sends the first Form 470-3486, Demand Letter for Food Stamp Intentional Program Violation Overissuance, or Form 470-3487, Demand Letter for Food Stamp Inadvertent Household Error Overissuance, informing the person of the food stamp overpayment.

b. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the recovery of an overpayment through benefit reduction, but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485, 470-0486, or 470-0486(S), Notice of Decision, informing the person that benefits will be reduced to recover a food assistance overpayment.